

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

THE STATE OF MISSISSIPPI,)
ex rel. LYNN FITCH, in)
her official capacity as Attorney General)
of the State of Mississippi,)
Plaintiff,)
v.)Civil Action No. 1:20cv168-LG RPM
)
)
THE PEOPLE'S REPUBLIC OF CHINA,)
THE COMMUNIST PARTY OF CHINA,)
NATIONAL HEALTH COMMISSION)
OF THE PEOPLE'S REPUBLIC OF)
CHINA, MINISTRY OF EMERGENCY)
MANAGEMENT OF THE PEOPLE'S)
REPUBLIC OF CHINA, MINISTRY OF)
CIVIL AFFAIRS OF THE PEOPLE'S)
REPUBLIC OF CHINA, PEOPLE'S)
GOVERNMENT OF HUBEI)
PROVINCE, PEOPLE'S GOVERNMENT)
OF WUHAN CITY, WUHAN INSTITUTE)
OF VIROLOGY, and CHINESE)
ACADEMY OF SCIENCES,)
Defendants.)

MOTION FOR EXTENSION OF TIME

COMES NOW, the Plaintiff, State of Mississippi, *ex rel* Lynn Fitch, Attorney General, and respectfully files this Motion for Extension of Time in which to serve process, and in support thereof, would show the following:

1. The Plaintiff filed its Complaint on May 12, 2020.
2. Federal Rule of Civil Procedure 4(m) states that

If a defendant is not served within 90 days after the complaint is

filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. **This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).**

[emphasis added]

3. This civil action involves several international Defendants, including the People's Republic of China as well as Chinese government agencies and subdivisions.

4. Federal Rule of Civil Procedure 4(j) states that “A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.”

5. Most, if not all, of the defendants fall under 28 USC § 1608, which states that if service cannot be made within 30 days, it can be

dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

6. For the Communist Party of China and other defendants that may not fall under 28 USC § 1608, service upon the international Defendants must be completed in the Netherlands through the Central Authority in The Hague. The complete procedure for service of process via the Hague Convention takes approximately sixteen (16) weeks or longer.

7. The Plaintiff has endeavored to fully maintain our services to the State of

Mississippi in the midst of this historic Covid-19 pandemic. Following the filing of the complaint, the Attorney General's Office was inundated with Covid-related complaints and issues, including but not limited to price gouging. Our attorneys have strived to meet their caseloads and the needs of Mississippi consumers in this extraordinary time, while working from home and caring for their children who have been home. Unfortunately, this has caused a delay in the service of process.

8. Therefore, the Plaintiff respectfully requests an extension of time to serve the foreign defendants pursuant to 28 USC § 1608 and the Hague Convention.

9. Specifically, the Plaintiff requests a six (6) month extension to effectuate service, however, the Plaintiff reasonably expects that service will be completed substantially within that amount of time.

10. If any extension of time is granted, the Plaintiff will keep the Court apprised of the status of service upon the foreign defendants.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that upon consideration of this motion, the Court will grant an extension of 180 days from November 2, 2020, in which to complete service of process upon the foreign Defendants. The Plaintiff further requests any such other relief as this Court may deem just.

Dated: November 2, 2020

Respectfully submitted,

**LYNN FITCH
ATTORNEY GENERAL
OF THE STATE OF**

MISSISSIPPI

/s/ Lynn Fitch

Lynn Fitch, Miss. Bar No. 3385
Office of the Attorney General
Post Office Box 220
550 High Street, Suite 1200
Jackson, Mississippi 39205
Telephone: (601) 359-3908